

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.362 of 1988.

Date of decision : September 15 ,1989.

Smt. Arati Singh, wife of
E.D. Stamp Vendor, Kendrapara H.O.,
Town, P.O. Kendrapara, District-Cuttack. ... Applicant.

Versus

1. Union of India, represented by its
Secretary, Department of Posts,
Dak Bhawan, New Delhi.
 2. Postmaster General, Orissa Circle,
At, P.O. Bhubaneswar, Dist-Furi.
 3. Superintendent of Post Offices,
Cuttack North Division, At, P.O. &
District-Cuttack.
 4. Postmaster, Kendrapara H.O.,
At/P.O. Kendrapara, Dist-Cuttack.
- ... Respondents.

For the applicant ... M/s. Devanand Misra,
Deepak Misra, R.N. Naik,
A. Deo, & R.N. Hota, Advocates.

For the respondents. .. Mr. Ganeswar Rath,
Senior Standing Counsel (Central)

C O R A M :

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *Yes*
 3. Whether His Lordship wishes to see the fair copy of
the judgment ? Yes.
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J U D G M E N T

N. SENGUPTA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the reliefs that the applicant has sought for are a declaration that Rule 9 of the Posts & Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964 (hereinafter to be referred as the Rules), is ultravires and for grant of subsistence allowance for the period for which she was put off duty.

2. The facts averred by the applicant are that she was appointed as an Extra-departmental Stamp Vendor at Kendrapara Head Office. An allegation was made against her that there was a shortage of stamp value of Rs.254.18 paise out of the total advance of Rs.300/-. On this allegation she was put off duty on 29.12.1986 and a disciplinary proceedings was started against her. The enquiring officer in his report dated 28.4.1988 found that the charge was not proved and with this finding the Disciplinary authority agreed, a copy of the order of the Disciplinary authority is Annexure-2 to the petition. The Disciplinary authority by his order dated 7.5.1988 reinstated the applicant in service forthwith. Against the order putting her off duty, the applicant preferred an appeal to the Superintendent of Post Offices, Cuttack North Division who relying on Rule 9(3) of the Rules disallowed the appeal on 4.7.1988 (copy of the order is Annexure-3 to the petition). On these facts the applicant has prayed that she should be given allowance for the period from the date she was put off ^{duty} till she was reinstated in service. She has also averred that Rule 9(3) of the Rules is unsustainable.

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3. The respondents in their counter have referred to some absence of the applicant from duty on different dates in April, 1986 and some shortage of stamp during that period for which the stamp advance which initially was Rs.500/-was reduced to Rs.300/-. They have further stated that on 29.12.1986 a shortage of Rs.254.18P. was found and accordingly the applicant was put off duty on that date. They have admitted that the applicant preferred an appeal in December, 1986 and also about the rejection which they say was on the ground of the work and the conduct of the applicant not having been above board. They have relied on Rule 9(3) of the Rules and have taken the stand that under the said Rules she is not entitled to any allowance or payment for the period she was off duty. In the counter reference to some case laws have been made.

4. As is evident, the real point for consideration in this application is whether when the charge is not established but an Extra-departmental agent is put off duty and subsequently reinstated in service, could he/she claim the amount that he/she would have got had he/she not been put off duty. For what I am going to state below it would not be necessary to address myself to the question whether Rule 9(3) of the Rules is ultravires or invalid. In the counter, a reference has been made to the case of Superintendent of Post Offices v. P.K.Rajamma and others reported in AIR 1977 SC 1677. In that case, the question before Their Lordships of the Supreme Court was whether the Extra-Departmental Agents held civil post or were merely agents, this question was answered by the Hon'ble Supreme Court in paragraph 5 of their judgment to be found at pages 1679 and 1680 of the report. In that paragraph, a

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distinction was made between the common concept of an agent and the holder of a post or public servant. His Lordship Gupta, J, who spoke for the Court, stated that Rules made it clear that the Extra-Departmental Agents worked under the direct control and supervision of the authorities who obviously had a right to control the manner in which they must carry out their duties. His Lordship further went on to say that there can be no doubt therefore that the relationship between the postal authorities and the extra departmental agents was one of master and servant. The underlining has been made to supply emphasis. It is true that there is a bar under Rule 9(3) for giving allowance for the period an Extra-departmental agent is put off duty, but that has to be read in the context in which it appears. Under sub-rule(1) power is given to the concerned authority to put an employee off duty and sub-rule(3) says that an employee shall not be entitled to any allowance for the period for which he is kept off duty under this rule. If this sub-rule be read as meaning that under no circumstance could an extra departmental agent be paid any amount for the period he was put off duty, it would lead to an absurd result. Under common law a person wronged has a remedy to sue for damages and under the provisions of Section 28 of the Administrative Tribunals Act, 1985, if any claim relates to a matter relating to service, it would be cognizable only by the Administrative Tribunal and by no court other than the Supreme Court. If somebody is wrongly charged definitely the cause of action would accrue to him/her to file an action for compensation, this undoubtedly is a matter relating to service and in view of what has been stated above, such an action would lie only in the concerned Administrative Tribunal. As has been stated above, the Hon'ble Supreme Court found that the extra departmental agents really

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hold civil posts and the relationship between the postal authorities and those agents is that of Master and servant. Therefore, this is a case where a servant is aggrieved against the action of the master. In this view of the matter, I would ~~repeal~~ the contention of Mr. Ganeswar Rath, learned Senior Standing Counsel (Central) that Rule 9(3) is a complete bar to the grant of any allowance or any payment to the applicant for the wrongful charging of her.

5. Some reliance has been placed in the counter on the case reported in AIR 1980 SC 840 (The Managing Director, U.P. Ware Housing Corporation and others v. Vijay Narayan Vajpayee) to contend that this Tribunal cannot pass any order directing any back wages or any liquidated sum. The facts of the reported case were different. There ~~was~~, what the Hon'ble Supreme Court ruled was that in a writ petition, the High Court would not ordinarily direct payment of full back wages, such matters were to be determined by the labour or other appropriate courts or forums. As has been shown above, in view of the provisions of Section 28 of the Administrative Tribunals Act, 1985, an action for claim of compensation relating to a service matter is only cognizable by an Administrative Tribunal, in the instant case, by this Bench of the Tribunal and therefore, that reported case has no application. To repeat, it may be stated that from the order of the disciplinary authority it would be manifest that infact there was really no shortage and the charge was really groundless. Therefore, the charge being illegal from its very inception, ~~and~~ the order putting off duty was initially defective.

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Hence, it cannot be made a ground to refuse the applicant to get compensation for this illegal act.

6. Quantifying the compensation depends on many factors but it has been the settled law that when some amounts are fixed for payment for specified periods, unless there are other circumstances, that would be the measure of compensation.

7. In the result, the applicant is found entitled to consolidated allowance per month that she would have got had she been continuing, which she would be deemed to have continued in, the circumstances of the case, in service. The respondents are directed to make payments accordingly within two months from the date of receipt of a copy of this judgment.

8. The applicant succeeds substantially. There shall be no order as to costs.



M. S. Gupta
15.9.89
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
September 15, 1989/Saranghi.